IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2563 OF 2005
WITH
WRIT PETITION NO.372 OF 2006

W.P. 2563/05 :

Brihanmumbai Municipal Corporation
through the General Manager,
BEST Undertaking. ...Petitioner.

Versus

Pradeep Gopal Dayme. ...Respondent.

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Mr. S.K. Talsania, Senior Advocate i/b. Cr. Bayley & Co. for the Petitioner.
Mr. Y.K. Sharma i/b. M/s. Ganesh & Co. for the Respondent.

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W.P. 372/06 :

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Mr. Y.K. Sharma i/b. M/s. Ganesh & Co. for the Petitioner.
Mr. S.K. Talsania, Senior Advocate i/b. Cr. Bayley & Co. for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

January 19, 2007.

ORAL JUDGMENT:

The Brihanmumbai Electric Supply and Transport Undertaking as well as the workman who was chargesheeted in disciplinary proceedings are before the Court in these proceedings under Article 226 of the Constitution. The employer seeks to challenge an order of the Industrial Court by which the appeal of the employer against an order of reinstatement without back wages has been dismissed and the penalty of dismissal has been substituted by "a last warning". The workman is aggrieved by the denial of back wages. Both the petitions have been heard together and are being disposed of by this judgment.

2. The workman in question, was employed as a driver by the BEST Undertaking from 15th October 1992. A disciplinary enquiry was held against the workman on the allegation that on 8th February 2001, while he was driving a bus belonging to the Undertaking on Route 282/4 from Damunagar to Kandivali Bus Station, an accident took place in the course of which, the bus

which was being driven by the workman dashed against a pedestrian. The pedestrian was rushed to the Hospital, but was declared dead before admission. The chargesheet dated 8th March 2001 was for a misconduct under Standing Order 20(j) – gross negligence in discharge of duties – and Standing Order 20(k) for a breach of rules. A departmental enquiry was conducted against the chargesheeted workman by the Senior Traffic Officer at which the workman was defended by a representative. The Trying Officer came to the conclusion that the charges levelled against the workman were conclusively established. Having regard to the nature of the misconduct, the Trying Officer was of the view that the workman ought not to be retained in service. By an order dated 27th April 2001, the Respondent was dismissed from service. The departmental appeals preferred by the workman were dismissed on 26th June 2001 and 17th July 2001.

3. The workman thereupon moved an application before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. By an order dated 15th March 2003,

the Labour Court held that the enquiry was fair and proper and was in accordance with the principles of natural justice. The Labour Court also held that the findings of the Enquiry Officer were not perverse. However, on the question of punishment, the Labour Court was of the view that dismissal from service constituted a shockingly disproportionate punishment. Consequently, the Undertaking was directed to reinstate the workman with continuity of service, but without back wages. Appeals were filed against the order of the Labour Court both by the workman and by the Undertaking. The Industrial Court dismissed both the appeals by an order dated 2nd December 2004. Two petitions were preferred by the workman and by the Undertaking respectively to challenge the order of the Industrial Court.

4. On behalf of the management, it has been submitted by Counsel that (i) Both the Labour Court and the Industrial Court have concurrently held that the finding of misconduct was duly established; (ii) There is a concurrent finding to the effect that the

enquiry was fair and proper and there is no perversity in the findings; (iii) A serious accident has taken place in the course of which a fatality resulted in which a pedestrian against whom the bus dashed, died; (iv) The past record of the workman was not free from blemish and in the past, he has been involved in other road accidents; (v) In a case such as the present, having regard to the law laid down by the Supreme Court the principle of *res ipsa loquitur* is attracted and the workman in the present case has no explanation as to the manner in which the accident had occurred; (vi) Having regard to seriousness of the charge of misconduct which was found to be established, the management was justified in imposing the penalty of dismissal. The Labour Court, it was urged, was manifestly in error in interfering with the award of punishment.

5. On the other hand, on behalf of the workman, it has been submitted that (i) The circumstances on the record would militate against the finding of misconduct and the two important circumstances were that (a) the bus was immediately stopped at

the site of the accident and neither the driver, nor the conductor had abandoned the bus; and (b) no blood marks were found on the tyre of the bus which would negate the inference that the pedestrian had come under the tyre of the vehicle; (ii) Though in the past, the workman had been involved in four accidents, it is only on one occasion that he was subjected to censure by the Undertaking; and (iii) In any event, having regard to the reasons which have been indicated by the Labour Court and the Industrial Court, no interference with the order of the Courts below is warranted.

6. In considering the rival submissions, it would be necessary to advert to the findings of the Labour Court. The Labour Court held that the enquiry was fair and proper and that the findings of the Trying Officer were not perverse. Nonetheless the Labour Court interfered with the punishment of dismissal, holding that the Courts should take a lenient view and should ensure that for such an act of misconduct the family of the workman should not suffer. The Labour Court noted that in the

past, there were three incidents involving accidents on the part of the workman and in the fourth incident which was the subject matter of the proceedings, a death of a pedestrian has been caused. Yet, the Labour Court came to the conclusion that the penalty of dismissal was harsh and shockingly disproportionate.

7. When the matter was carried in appeal to the Industrial Court, the Learned Judge noted from the report of enquiry which was placed on record that the Enquiry Officer had discussed the entire evidence that was adduced in the enquiry. The Industrial Court noted that the defence that the pedestrian had accidentally dashed against the rear part of the bus because of an accidental act of slipping from a heap of sand which was lying in the vicinity was disbelieved. The Industrial Court was of the view that unless the Court was to record the finding that there was no material before the Enquiry Officer, the finding as to misconduct should not be interfered with.

8. The circumstances which have been relied upon on

behalf of the workman to assail the finding of misconduct would manifestly raise disputed questions of fact which lie outside the province of the jurisdiction under Article 226 of the Constitution. In a disciplinary enquiry, it is primarily for the disciplinary authority to determine as to whether a finding of misconduct can be arrived at on the basis of the material on record. The disciplinary enquiry is neither governed by the strict rules of evidence which govern criminal trials nor is the standard of proof that which governs a criminal trial. The charge of misconduct is required to be proved on a preponderance of probabilities in a disciplinary enquiry and not beyond reasonable doubt as in the case of a criminal trial. So long as a finding of misconduct is based on some evidence, the reviewing Court would not be justified in interfering with the same. The report of the Enquiry Officer was based on a consideration of the relevant evidence. The cross-examination of the Bus Inspector who rushed to the accident site has been dealt with. The Inspector deposed that he inspected the site of the accident and at a distance of 4 to 5 feet, there was a pool of blood that had collected. The chargesheeted workman, in the course of his

statement only stated that at about 20.30 hours while driving bus towards Kandivali Station, he heard persons on the road shouting, Upon which he stopped the bus at once. After getting down from the bus, he saw that a pedestrian had fallen down near the rear side of bus. There is merit in the submission which has been urged on behalf of the management that in the case of a fatal accident such as the present, the principle of *res ipsa loquitur* must apply. The facts speak for themselves. The delinquent workman in this case had absolutely no explanation of the manner in which or of the circumstances in which the accident took place.

9. In **Cholan Roadways Ltd. vs. G. Thirugnanasambandam**,[1] the Supreme Court had occasion to consider the principle that must apply to a situation where a fatality has resulted in the course of a vehicular accident. The Court has observed as follows :

> "Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. As noticed hereinabove, the enquiry officer has categorically rejected the defence of the

1 (2005) 3 SCC 241

> respondent that the bus was being driven at a slow speed."

The Labour Court interfered with the order of punishment on grounds which are completely specious. The Labour Court was completely in error in forming the view that the Court in such a case should take a lenient view. There is a fundamental fallacy in the approach of the Labour Court. In such matters, the law always has been to the effect that it is only when the punishment can be regarded as shockingly disproportionate that the jurisdiction of the reviewing Court to interfere with the punishment would be attracted.

10. Leniency by the Labour Courts in disciplinary matters breeds indiscipline. This cannot and should not be countenanced particularly having regard to the paramount public interest of development and growth of industrial enterprise. Leniency to errant bus drivers is misplaced. Their negligence affects the lives of others in society. Condoning misconduct in such cases is neither within the province of the Labour Court nor in the interests of justice. It is time that Labour Courts cease and desist from an

improper exercise of jurisdiction.

11. The fact that the past record of the workman showed the commission of accidents in the past was drawn to the attention of the Labour Court. It may well be that it was only on one occasion out of four accidents in the past that the workman was censured. At the same time, it cannot be possibly said that the record of service was free from blemish. Be that as it may, even a single act of misconduct in an appropriate case will justify a punishment of dismissal where the misconduct is grave or serious. In the present case, the workman was found negligent in the discharge of his duties as a driver. A fatal accident had resulted. The punishment of dismissal can in such circumstances not be regarded as disproportionate.

12. For these reasons, the petition filed by the management shall have to be allowed and is accordingly allowed by quashing and setting aside the orders of the Labour Court and the Industrial Court to the extent to which the Undertaking was directed to

reinstate the workman with continuity of service, but without back wages. Rule is made absolute in terms of prayer clause (a). The petition filed by the workman shall stand dismissed. There shall be no order as to costs.

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